IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: Laymon S. HUMPHRIES *et al.*	Confirmation No.: 6307
Application No.: 10/758,769	Group Art Unit: 2181
Filed: January 16, 2004	Examiner: Franklin, R.
Customer No.: 25537	

For: METHOD AND SYSTEM FOR REMOTELY CONFIGURING MOBILE TELEMETRY DEVICES

APPEAL BRIEF

Honorable Commissioner for Patents
Alexandria, VA 22313-1450

Dear Sir:

This Appeal Brief is submitted in support of the Notice of Appeal dated December 5, 2008.

I. REAL PARTY IN INTEREST

The real party in interest of the present application, solely for purposes of identifying and avoiding potential conflicts of interest by board members due to working in matters in which the member has a financial interest, is Verizon Communications Inc. and its subsidiary companies, which currently include Verizon Business Global, LLC (formerly MCI, LLC) and Cellco Partnership (doing business as Verizon Wireless, and which includes as a minority partner

affiliates of Vodafone Group Plc). Verizon Communications Inc. or one of its subsidiary companies is an assignee of record of the present application.

II. RELATED APPEALS AND INTERFERENCES

Appellants are unaware of any related appeals and interferences.

III. STATUS OF THE CLAIMS

Claims 1-4, 6-11, 13-18, and 20-33 are pending in this appeal, in which claims 5, 12, and 19 have earlier been canceled. No claim is allowed. This appeal is therefore taken from the final rejection of claims 1-4, 6-11, 13-18, and 20-33 on September 5, 2008.

IV. STATUS OF AMENDMENTS

All amendments have been entered.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The present invention addresses problems associated with tracking mobile telemetry devices for fleet and asset management. In particular, there is a need for a fleet and asset management system that effectively integrates Global Positioning System (GPS) technology to ensure timely acquisition of location information.

Independent claim 1 provides for the following:

1. A method for configuring telemetry devices over a wireless network (See, e.g., Specification ¶ [08]), the method comprising:

transmitting a configuration message over the wireless network to one of the telemetry devices (See, e.g., Specification ¶¶[29]-[33]; Figs. 1-3, element 103) for configuring a programmable input/output (I/O) port of the one telemetry device (See, e.g., Specification ¶¶[08], [75]; Figs. 1-3, elements 103, 209, 211), wherein the I/O port couples to an object, and the one telemetry device sets parameters relating to the I/O port according to the configuration message (See, e.g., Specification ¶¶ [08], [40]-[49]; Fig. 2, elements 209, 211);

receiving data corresponding to the I/O port of the one telemetry device for managing a plurality of objects corresponding to the telemetry devices, wherein the wireless network is a two-way paging system (See, e.g., Specification ¶¶ [08], [45], [46]; Fig. 2, element 201);

receiving a location data request for Assisted-Global Positioning System (A-GPS) data over the wireless network from the one telemetry device (See, e.g., Specification ¶¶ [08], [47], [55]-[58]; Fig. 2, element 203, Fig. 3, element 303); and

transmitting the A-GPS data in response to the location data request, wherein the one telemetry device determines location of the object based upon the A-GPS data (See, e.g., Specification ¶¶ [08], [47], [55]-[58]; Fig. 2, element 203, Fig. 3, element 303).

Independent claim 8 provides for the following:

8. A fleet and asset management system for configuring telemetry devices over a wireless network (See, e.g., Specification ¶ [10]), the system comprising:

a presentation server configured to generate a configuration message for transmission over the wireless network to one of the telemetry devices for configuring a programmable

input/output (I/O) port of the one telemetry device (See, e.g., Specification ¶¶ [10], [40]-[49], [55], [56]; Fig. 3, element 311), wherein the I/O port couples to an object, and the one telemetry device sets parameters relating to the I/O port according to the configuration message (See, e.g., Specification ¶¶ [10], [40]-[49], [56], [57]; Fig. 2, elements 209, 211, Fig. 3);

a messaging server configured to transmit the configuration message and to receive data corresponding to the I/O port of the one telemetry device for managing a plurality of objects corresponding to the telemetry devices (See, e.g., Specification ¶¶ [10], [40]-[49], [55], [56]; Fig. 3, element 301), wherein the wireless network is a two-way paging system (See, e.g., Specification ¶ [10], [45], [46]; Fig. 2, element 201); and

a GPS server configured to receive a location data request for Assisted-GIobal Positioning System (A-GPS) data over the wireless network from the one telemetry device, and to transmit the A-GPS data in response to the location data request (See, e.g., Specification ¶¶ [10], [40]-[49], [55]-[59]; Fig. 3, element 303),

wherein the one telemetry device determines location of the object based upon the A-GPS data (See, e.g., Specification ¶¶ [10], [55]-[65]; Fig. 3).

Independent claim 15 provides for the following:

15. A computer-readable storage medium carrying one or more sequences of one or more instructions for configuring telemetry devices over a wireless network (See, e.g., Specification ¶ [11]), the one or more sequences of one or more instructions including instructions which, when executed by one or more processors, cause the one or more processors to perform the steps of:

transmitting a configuration message over the wireless network to one of the telemetry devices for configuring a programmable input/output (I/O) port of the one telemetry device (See, e.g., Specification ¶¶ [08], [29]-[33], [75]; Figs. 1-3, elements 103, 209, 211), wherein the I/O port couples to an object, and the one telemetry device sets parameters relating to the I/O port according to the configuration message (See, e.g., Specification ¶¶ [11], [40]-[49]; Fig. 2, elements 209, 211);

receiving data corresponding to the I/O port of the one telemetry device for managing a plurality of objects corresponding to the telemetry devices, wherein the wireless network is a two-way paging system (See, e.g., Specification ¶¶ [11], [45], [46]; Fig. 2, element 201);

receiving a location data request for Assisted-Global Positioning System (A-GPS) data over the wireless network from the one telemetry device (See, e.g., Specification ¶¶ [11], [47], [55]-[58]; Fig. 2, element 203, Fig. 3, element 303); and

transmitting the A-GPS data in response to the location data request, wherein the one telemetry device determines location of the object based upon the A-GPS data (See, e.g., Specification ¶¶ [11], [47], [55]-[58]; Fig. 2, element 203, Fig. 3, element 303).

Independent claim 22 provides for the following:

22. A method for configuring telemetry devices over a wireless network (See, e.g., Specification ¶ [12]), the method comprising:

communicating with a fleet and asset management system to obtain information about a plurality of objects (See, e.g., Specification ¶ [12]);

receiving a user input relating to configuration of one of a plurality of telemetry devices corresponding to the plurality of objects (See, e.g., Specification ¶¶ [12], [85]; Fig. 10, element 1013; Abstract); and

in response to the user input, transmitting the user input to the fleet and asset management system (See, e.g., Specification ¶ [12]; Abstract),

wherein the fleet and asset management system generates a configuration message (See, e.g., Specification ¶¶ [12], [75]-[83], Figs. 8a-8c, 9, element 801); based on the user input for transmission over the wireless network, including a two-way paging system (See, e.g., Specification ¶ [12], [45], [46]; Fig. 2, element 201), to the one telemetry device for configuring an input/output (I/O) port of the one telemetry device according to a protocol adapted for the two-way paging system, the I/O port being coupled to a corresponding one of the objects, and the one telemetry device setting parameters relating to the I/O port according to the configuration message (See, e.g., Specification ¶ [12], [75]-[83], Figs. 8a-8c, 9; Abstract).

Dependent claim 23 provides for the following:

23. A method according to claim 22, further comprising:

receiving another user input to instruct the fleet and asset management system to transmit a control message to the one telemetry device, in response to the control message the one telemetry device controlling one of the objects via the I/O port and status of the I/O port (See, e.g., Specification ¶¶ [12], [75]-[83], Figs. 8a-8c, 9, element 807).

Independent claim 27 provides for the following:

27. A client device for configuring telemetry devices over a wireless network (See, e.g., Specification ¶ [13]), the client device comprising:

means for communicating with a fleet and asset management system to obtain information about a plurality of objects (See, e.g., Specification ¶ [13]);

means for receiving a user input relating to configuration of one of a plurality of telemetry devices corresponding to the plurality of objects (See, e.g., Specification ¶¶ [13], [85]; Fig. 10, element 1013; Abstract); and

means for transmitting the user input to the fleet and asset management system, in response to the user input (See, e.g., Specification ¶ [13]; Abstract),

wherein the fleet and asset management system generates a configuration message (See, e.g., Specification ¶¶ [13], [77]-[83], Figs. 8a-8c, 9, element 801) based on the user input for transmission over the wireless network, including a two-way paging system, to the one telemetry device for configuring an input/output (I/O) port of the one telemetry device according to a protocol adapted for the two-way paging system (See, e.g., Specification ¶ [13], [45], [46]; Fig. 2, element 201), the I/O port being coupled to a corresponding one of the objects, and the one telemetry device setting parameters relating to the I/O port according to the configuration message (See, e.g., Specification ¶ [13], [75]-[83], Figs. 8a-8c, 9; Abstract).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 15-18, 20, and 21 are directed to nonstatutory subject matter under 35 U.S.C § 101?

Whether claims 22-24 and 27-29 are anticipated under 35 U.S.C § 102 by *Geissler et al.* (US 2003/0109988)?

Whether claims 1-4, 6-11, 13-18, 20, 21, 25, 26, 30, and 31are obvious under 35 U.S.C. § 103 based on *Geissler et al.* (US 2003/0109988) in view of *Godfrey et al.* (US 2005/0071079)?

Whether claims 32 and 33 are obvious under 35 U.S.C. § 103 based on *Geissler et al.* (US 2003/0109988) in view of *Godfrey et al.* (US 2005/0071079) and *Wandel* (US 6,034,623)?

VII. ARGUMENT

A. CLAIMS 15-18, 20, AND 21 ARE DIRECTED TO STATUTORY SUBJECT MATTER BECAUSE THEY ARE DIRECTED TO A PHYSICAL STORAGE MEDIUM

The Examiner rejects claims 15-18, 20, and 21 as being directed to nonstatutory subject matter, basing this rejection on paragraphs [88]-[91] of the instant specification for a definition of "computer readable medium."

Irrespective of any of the examples set forth in paragraphs [88]-[91] of the instant specification as to a "computer readable medium," claims 15-18, 20, and 21 are **limited** to a "computer readable **storage** medium." That is, the claims are directed to a **physical storage** medium that includes the instructions for performing the recited process. Such storage mediums may include, for example, hard drives, flash drives, floppy disks, compact disks, etc. That is, it includes any **physical** storage medium for storing the recited computer-readable instructions for performing the recited process. Such a physical storage medium is clearly a machine or an article of manufacture, within the statutory classes of invention recited in 35 U.S.C. § 101.

To the extent the Examiner may be interpreting such a "computer readable storage medium" as also including nonstatutory subject matter within its purview, Appellants respectfully disagree. The Examiner's contorted interpretation of the claims in an alleged nonstatutory

manner, when it should be apparent to the Examiner that the claims may also be interpreted in a statutory manner, is improper.

In any event, since claims 15-18, 20, and 21 each relate to a "computer-readable **storage** medium," they are, indeed, directed to statutory subject matter within the meaning of 35 U.S.C. § 101.

In the Advisory Action of November 21, 2008, the Examiner makes the following assertion:

> [T]he Examiner notes that Applicants [sic] specification states that a "computer readable medium" can also include non-statutory subject matter such as "transmission media." Applicant's specification does not define the term "computer readable storage medium." Therefore, in light of applicant's specification, the claims **could** be directed towards non-statutory subject matter (i.e., "transmission media"). If Applicant wishes to exclude non-statutory subject matter from the claims, Applicant is advised to amend the claims to use terms consistent with the specification (i.e. "non-volatile media" and "volatile media") to avoid confusion and argument as to the bounds of the claim limitations.

The claims at issue do not recite a "computer readable medium," but, rather, has been amended to recite, instead, a "computer-readable **storage** medium." Thus, to whatever extent the Examiner is interpreting "transmission media" to relate to a non-physical (presumably non-statutory media), the claims at issue preclude any computer readable medium that is not a "computer-readable **storage** medium." The Examiner asserts that the term "computer-readable storage medium" is not defined in the specification. However, on its face, the claim language can reasonably be understood by one of ordinary skill in the art. Accordingly, no special definition of the term need be present in the specification. By the very terms of the claim, the computer readable medium must be one capable of **storage**. That is, it must be a physical article, capable of holding stored data, or instructions. If the Examiner interprets "transmission media" as incapable of **storage** of such instructions, that may be debatable, but what is not debatable is that

if such "transmission media" is incapable of storing instructions that are readable by a computer, then it does not fall into the subject matter realm prescribed by the instant claim language.

Moreover, merely because "the claims **could** be directed towards non-statutory subject matter," if interpreted in some manner, as alleged by the Examiner (an allegation with which Appellants do not agree), is no basis to reject the claims under 35 U.S.C. § 101, especially when it is apparent, and the Examiner acknowledges, that the claim language clearly describes statutory subject matter. Appellants contend that the claims cannot be construed as including non-statutory subject matter, but, even so, it is a general principle of patent law that claims should be interpreted so as to uphold and not to destroy the right of the inventor. This principle has existed since at least 1863 when the U.S. Supreme Court decided *Turrill v. Michigan S. & N.J. R.R.,* 68 U.S. (1 Wall.) 491, 510 (1863). While that case was directed to an infringement action involving patented claims, rather than claims still pending before the USPTO, as is the case here, the principle is similar. That is, where a claim can conceivably be interpreted in one of two ways, one patentable (statutory) and the other unpatentable (non-statutory), there would appear to be no valid reason for arbitrarily taking the latter view, destroying an inventor's right.

Hence, the claimed computer-readable **storage** medium clearly constitutes statutory subject matter within the meaning of 35 U.S.C. § 101.

Accordingly, the Honorable Board is respectfully requested to reverse the rejection of claims 15-18, 20, and 21 under 35 U.S.C. § 101.

B. CLAIMS 22-24 AND 27-29 ARE NOT ANTICIPATED BY *GEISSLER ET AL.*, BECAUSE *GEISSLER ET AL.* FAILS TO DISCLOSE ANY I/O PORTS, CONFIGURED IN ACCORDANCE WITH A CONFIGURATION MESSAGE FROM A USER INPUT.

To anticipate a patent claim, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001); *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

The rejection of claims 22-24 and 27-29 under 35 U.S.C. § 102 (e) as anticipated by *Geissler et al.* is improper because *Geissler et al.* does not, in fact, anticipate the subject matter of independent claims 22 and 27.

Independent claims 22 and 27 require the "configuration message" to configure "an **input/output (I/O) port** of the one telemetry device," with the "**I/O port** being coupled to a corresponding one of the objects, and the one telemetry device setting parameters relating to the **I/O port** according to the configuration message." *Geissler et al.* fails to disclose any I/O ports, much less I/O ports configured in accordance with a configuration message from a user input.

The Examiner points to paragraph [0045] of *Geissler et al.* as evidence of a user input relating to configuration of a telemetry device. This portion of *Geissler et al.* does disclose that a "response signal" may be sent by a "qualified person" (a user) to a device and that a processing unit 260 in the device receives that response signal and may formulate a control signal based on that response signal. The Examiner also points to paragraph [0055] of *Geissler et al.* as evidence of the claimed I/O port configuration. However, no I/O port is disclosed therein. Paragraph [0055] relates to the device controlling the "output unit" via the control signal. The remainder of

the paragraph relates to a specific example of remote control of an output unit to release a drug to a person suffering an asthmatic attack. Thus, no **I/O port**, particularly in the manner claimed (i.e., **configured by a user input**, and **coupled to one of the objects**), is disclosed in *Geissler et al.*

To the extent that the Examiner intends the "output unit" of *Geissler et al.* to be the claimed "I/O port," the "output unit" is defined by *Geissler et al.* at paragraphs [0049] and [0050]. Paragraph [0049] describes "a component for providing various forms of feedback or stimuli to a person, animal or object **via an output unit**." It further states that "Output units can take any form to achieve the intended function," and then, various examples of such output units are given: "syringes, electrodes, pumps, vials, injectors, drug and/or pharmaceutical or medicinal delivery mechanism or systems, tactile simulators, etc." The "output unit may be integral with the Device or a separate component in communication with the ASP 200 and/or Device 100…" Paragraph [0050] gives an example of an "output unit" including "a microprocessor or logic for interpreting commands" or it "may be coupled to the microprocessor of the device."

None of the examples of an output unit given by *Geissler et al.* constitutes or suggests an I/O port, much less the claimed I/O port of a telemetry device.

Since no I/O port is disclosed by *Geissler et al.*, the reference cannot anticipate claims 22 and 27 which specifically require an I/O port. To the extent the "output unit" of *Geissler et al.* is considered an I/O port by the Examiner because it may act also to provide sensor information to Device 100 (see paragraph [0054] and page 2 of the Advisory Action of November 21, 2008, there is still no "**configuring** an input/output (I/O) port of the one telemetry device **according to a protocol adapted for the two-way paging system**, the **I/O port being coupled to a**

corresponding one of the objects, and the one telemetry device **setting parameters relating to the I/O port according to the configuration message**," as in claim 22, for example.

At page 2 of the Final Office Action, the Examiner asserts that *Geissler et al.* "inherently" provides I/O ports (the Examiner does not indicate exactly what is being relied on in *Geissler et al.* for such I/O ports). However, even assuming, *arguendo*, that *Geissler et al.* inherently provides such I/O ports because the control signal must follow some connection or data path to control the output unit, the claimed subject matter is still not met. Claims 22 and 27 do not merely recite an "I/O port." Rather, there is a **special relationship between the I/O port of the telemetry device and the configuration message generated by the user input**. That is, the I/O port of the telemetry device is "coupled to a corresponding one of the objects" and the telemetry device must **set the parameters of its I/O port according to the configuration message**.

Since *Geissler et al.* neither discloses nor discusses an I/O port of devices 100, it cannot be said to teach a setting of parameters of that I/O port in accordance with a user configuration message, even if it is assumed that an I/O port inherently exists. Perhaps, the Examiner is suggesting that the "inherent" I/O port is also "inherently" configured in accordance with a configuration message from a user. To establish inherency, the extrinsic evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." *In re Robertson,* 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) *citing Continental Can Co. v. Monsanto Co.,* 948 F.3d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991). Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. *Id.* At 1269, 20 USPQ2d at 1749 (*quoting In re Oelrich*, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981). At best, it can be said that, in *Geissler et al.*, the

device 100 controls an output unit via the control signal derived by a user response signal, but there is no indication anywhere in *Geissler et al.* that any I/O port of the device 100 is **configured in accordance with a configuration message from a user**, as required by the instant claims.

At page 2 of the Final Office Action, it is recited, "Geissler teaches wherein the telemetry device sets parameters relating to the IO port." Clearly, this cannot be the case since the Examiner acknowledges that such an I/O port is not explicitly disclosed. If the I/O port is not explicitly disclosed, *Geissler et al.* cannot teach the telemetry device setting parameters relating to a phantom I/O port. In particular, the Final Office Action refers to lines 11-17 of paragraph [58] of *Geissler et al.*, indicating that the enabling and disabling of sensors by a remote station in response to a message by a user is equivalent to the setting of parameters related to an I/O port, as claimed. However, paragraph [58] relates to a user remotely powering individual devices up or down, i.e., turning devices "on" or "off." The mere turning of a device "on" or "off" cannot be considered, "configuring an input/output (I/O) port of the one telemetry device **according to a protocol adapted for the two-way paging system"** (claims 22 and 27), as claimed. Even if a user's request to turn a device on or off is broadly considered "configuring an input/output (I/O) port of a device," there is no evidence in *Geissler et al.* that such a "configuration" is in accordance with "**a protocol adapted for the two-way paging system,"** as claimed.

At page 2, third paragraph, of the Advisory Action, the Examiner asserts that setting parameters of the I/O port according to the configuration message is "not required by the claim limitations." Appellants respectfully disagree. For instance, claim 22 recites "the one telemetry device setting parameters relating to the I/O port according to the configuration message."

Since *Geissler et al.* fails to teach all of the elements of claims 22 and 27, as well as the specifically claimed relationship between those elements, *Geissler et al.* cannot anticipate claims

22-24 and 27-29. Accordingly, the Honorable Board is respectfully requested to reverse the rejection of claims 22-24 and 27-29 under 35 U.S.C. § 102 (e).

Moreover, assuming, *arguendo*, that claims 22 and 27 can be considered to be anticipated by *Geissler et al.*, an assumption with which Appellants disagree, claims 23, 24, 28, and 29 are separately patentable because they include further claim features that are not taught by *Geissler et al.*

In particular, claims 23 and 28 depend, respectively, from claims 22 and 27, and further include the features of "receiving **another user input** to instruct the fleet and asset management system to transmit a control message to the one telemetry device, in response to the control message the one telemetry **device controlling one of the objects via the I/O port and status of the I/O port**" (claim 23) and "**another user input** is received instructing the fleet and asset management system to transmit a control message to the one telemetry device, in response to the control message the one telemetry **device controlling the corresponding one of the objects via the I/O port**" (claim 28).

Thus, even if it can be assumed, *arguendo*, that *Geissler et al.* discloses a first user input relating to the configuration of one of the telemetry devices, there is no disclosure of "**another user input** ... instructing the fleet and asset management system to transmit a control message ... controlling the corresponding one of the objects via the I/O port." In fact, the Examiner points to the same paragraph [0055] of *Geissler et al.* as a disclosure of both the "user input" of claims 22 and 27, and the "another user input" of claims 23 and 28. To the extent that this portion of *Geissler et al.* discloses a user input, it cannot be a disclosure of both "a user input" and "another user input," as claimed. Claims 23 and 28 require two distinct user inputs: "a user input relating to

configuration of one of a plurality of telemetry devices," and "another user input to instruct the fleet and asset management system to transmit a control message."

Moreover, for the reasons above, *Geissler et al.* does not disclose the I/O port as claimed in claims 22 and 27, but, more so, the reference clearly does not disclose a control message "controlling one of the objects via the I/O port **and status of the I/O port**." Even if the Examiner could arguably find, through inherency, that *Geissler et al.* teaches the control of an object via an I/O port (and Appellants contend that any such finding is unreasonable), there is still no teaching, or even a suggestion, that any telemetry device in *Geissler et al.* controls the **status** of an I/O port.

At pages 3-4 of the Final Office Action, the Examiner refers to paragraph [0045], lines 1-7 and paragraph [0055], lines 9-12, of *Geissler et al.*, contending that the "another user input" in *Geissler et al.* is the response signal sent to a telemetry device by qualified medical personnel when it is determined that a medical condition of a patient is occurring. However, since the "user input," according to the Examiner, is the input at paragraph [0058] that controls the ON/OFF status of the individual devices or sensors within the individual devices, and the "another user input," according to the Examiner, is the response signal input by medical personnel at paragraph [0045] of *Geissler et al.*, if the first user input places the device in an OFF status, then the "another user input" is useless because the telemetry device is not in an enabled state to receive the response signal. Yet, claim 23, for example, recites, "receiving another user input to instruct the fleet and asset management system to transmit a control message to the one telemetry device, in response to the control message the one telemetry device controlling one of the objects via the I/O port and status of the I/O port." Thus, by the very nature of the claim language, the "another user input" must be able to cause a transmission of a **control message** to the telemetry device which, in response to the control message, must be capable of "controlling one of the objects via the I/O port and status of the

I/O port." In the Examiner's interpretation of *Geissler et al.*, the first "user input" may have disabled the telemetry device. Therefore, the "another user input" would be incapable of "controlling one of the objects via the I/O port and status of the I/O port," as required by the claim. Therefore, the Examiner's analysis is, respectfully, flawed, with respect to instant claims 23 and 28.

At page 2, paragraph 4, of the Advisory Action, the Examiner argues that *Geissler et al.* discloses a first user input to send a response message that controls the object at paragraph [0055], lines 9-18, and that subsequent response messages can be sent to the telemetry device at paragraph [0055], lines 18-21. Therefore, the Examiner concludes, "since the subsequent response messages are no different than the first response messages, Geissler teaches that a user input can be used to initiate the message transfer." However, in accordance with the instant claim language, the **first** "**user input**," as defined in claim 22, relates "to **configuration** of one of a plurality of telemetry devices corresponding to the plurality of objects," while the "**another user input**" of claim 23, depending from claim 22, acts "to instruct the fleet and asset management system to transmit a **control message** to the one telemetry device." Thus, the "user input" and the "another user input" of the instant claims are different. In contradistinction to these claimed user inputs, the response signal and the subsequent response signals described in paragraph [0055] of *Geissler et al.* are both signals from the same control unit 140 for controlling the dosage amount of a drug to be administered to a patient.

Further, the Examiner argues, in the Advisory Action, that the "claim limitations do not describe an order in which the 'user input' and 'another user input' take place," concluding that "it could be reasonable to interpret the claim limitations as the 'another user input' taking place before the 'user input'." Appellants respectfully disagree. Given the context of the claim, setting forth a method having sequential steps (as in claims 22-24) or a client device having means for performing

various functions in a preset order (as in claims 27-29), there is necessarily an ordered sequence in which the function (viz., "configuration of one of a plurality of telemetry devices corresponding to the plurality of objects") of the "first user input" and the function (viz., "to instruct the fleet and asset management system to transmit a control message to the one telemetry device") of the "another user input" occur. Until the configuration of a telemetry device occurs, a control message cannot be transmitted to the telemetry device.

Therefore, *Geissler et al.* does not teach the features of claims 23, 24, 28, and 29.

Accordingly, the Honorable Board is respectfully requested to reverse the rejection of claims 23, 24, 28, and 29 under 35 U.S.C. § 102 (e) for these reasons in addition to the above reasons anent claims 22 and 27.

C. CLAIMS 1-4, 6-11, 13-18, 20, 21, 25, 26, AND 30-33 ARE NOT RENDERED OBVIOUS BY *GEISSLER ET AL.* AND *GODFREY ET AL.* OR *GEISSLER ET AL.*, *GODFREY ET AL.*, AND *WANDEL* BECAUSE THE REFERENCES DO NOT DISCLOSE THE "PROGRAMMABLE I/O PORT," AS CLAIMED.

The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention under any statutory provision always rests upon the Examiner. *In re Mayne*, 104 F.3d 1339, 41 USPQ2d 1451 (Fed .Cir. 1997); *In re Deuel*, 51 F.3d 1552, 34 USPQ2d 1210 (Fed. Cir. 1995); *In re Bell*, 991 F.2d 781, 26 USPQ2d 1529 (Fed. Cir. 1993); *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In rejecting a claim under 35 U.S.C. § 103, the Examiner is required to provide a factual basis to support the obviousness conclusion. *In re Warner*, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967); *In re Lunsford*, 357 F.2d 385, 148 USPQ 721 (CCPA 1966); *In re Freed*, 425 F.2d 785, 165 USPQ 570 (CCPA 1970).

Appellants contend that the rejections of claims 1-4, 6-11, 13-18, 20, 21, 25, 26, 30, and 31 as obvious under 35 U.S.C. § 103 based on *Geissler et al.* in view of *Godfrey et al.* and claims 32 and 33 as obvious under 35 U.S.C. § 103 based on *Geissler et al.* in view of *Godfrey et al.* and further in view of *Wandel* are improper.

Independent claims 1, 8, and 15 recite a "programmable input/output (I/O) port of the one telemetry device"; and there is no indication in either *Geissler et al.* or *Godfrey et al.* of any I/O port, much less a **programmable** I/O port. The Examiner purports to find such a teaching in *Geissler et al.* at paragraphs [0048], [0055], [0058], and [0022]. For the reasons above, paragraph [0055] clearly discloses no such "programmable I/O port." Paragraph [0022] relates to a programmable "**clock**," but neither mentions nor suggests a programmable I/O port. Paragraph [0048] recites "updateable firmware" in the Device 100, but the ability to update firmware in the device itself by configuring the device for updating by plugging it into a computer and running an

update program, provides no teaching or suggestion of a programmable I/O port, especially a claimed **programmable I/O port** ("wherein the I/O port couples to an object, and the one telemetry device sets parameters relating to the I/O port according to the configuration message"). Paragraph [0058] relates to a power-saving feature to prolong the battery life of the Device 100, but there is no teaching or suggestion herein of any programmable I/O port, as claimed. This failure of the applied references to disclose or suggest the claimed "**programmable I/O port**" is sufficient grounds for reversal of the claims under 35 U.S.C. § 103 and such reversal by the Honorable Board is respectfully requested.

To the extent the Examiner considers the control of the ON/OFF status of the devices in *Geissler et al.* (paragraph [0058]) to constitute a teaching of a "programmable I/O port," Appellants note that the claims, e.g., claim 1, recite, "receiving data corresponding to the I/O port of the one telemetry device **for managing a plurality of objects** corresponding to the telemetry devices." If the telemetry device in *Geissler et al.* is powered down, i.e., in the OFF status, it cannot very well manage a plurality of objects, as is required of the telemetry device in the instant claims.

Moreover, *Godrey et al.* does not provide for this deficiency of *Geissler et al.*, *Godfrey et al.* being applied for an alleged teaching of receiving a location data request for an Assisted-Global Positioning System (A-GPS). The Examiner finds that it would have been obvious to modify the teachings of *Geissler et al.* to include an A-GPS system "because doing so allows for better tracking of objects" (Final Office Action of September 5, 2008-page 10). To the extent that *Godfrey et al.* suggests an A-GPS system, Appellants do not deny that A-GPS systems, *per se*, were known. However, merely because A-GPS systems existed is no reason, within the meaning of 35 U.S.C. § 103, to find it obvious to include such a system within the system of *Geissler et al.* There must be some reason that stems from the prior art or the knowledge of skilled artisans that would have led

the artisan to make such a modification to *Geissler et al.* The Examiner's rationale of "better tracking of objects" fails to explain why the artisan viewing the system of *Geissler et al.* would have sought "better" (whatever the Examiner intends by that term) tracking of objects when the system of *Geissler et al.* appears to do just fine tracking objects. That is, there is nothing to suggest to artisans that any modification to the system of *Geissler et al.* would have been desirable, nor of why or how any such modification would have been made.

At page 4 of the Final Office Action and page 2 of the Advisory Action, the Examiner contends that *Godfrey*, itself provides the motivation to combine through its teaching that the A-GPS system in *Godfrey* improves the tracking of a vehicle (the object) without some of the costs and disadvantages of the prior art, referring to paragraph [0012], lines 1-3 of *Godfrey*. However, paragraph [0012] of *Godfrey* merely indicates that any improvement to vehicle location is due to the unique Dedicated Short Range Communications (DSRC) of *Godfrey*. There is no indication that an A-GPS system, *per se*, provides for cost savings or advantages that would lead a skilled artisan to employ an A-GPS system in the system of *Geissler et al.*

Moreover, the instant claims do not merely require the use of an A-GPS system, *per se*, but, rather, the A-GPS system must be employed in the specific manner claimed and in accordance with the claimed interrelationship of elements, e.g., "receiving a location data request for Assisted-Global Positioning System (A-GPS) data over the wireless network from the one telemetry device; and transmitting the A-GPS data in response to the location data request, wherein the one telemetry device determines location of the object based upon the A-GPS data." Accordingly, there would have been no reason, and the Examiner has not articulated any reasoning with some rational underpinnings, to modify *Geissler et al.* to provide an A-GPS system therein in the specific manner claimed.

Wandel fails to provide for the deficiencies of the primary references. Accordingly, the Examiner's rationale for making the combination is deficient and, therefore, no *prima facie* case of obviousness has been established.

At page 2 of the Advisory Action, the Examiner contends that Appellants merely call the I/O port "programmable" but nothing in the claims requires a reprogramming of the I/O port and nothing in the claims require the I/O port to actually be "programmable." Appellants respectfully disagree.

The Examiner may not ignore descriptive adjectives before a claimed element. When interpreting a claim, words of a claim are generally given their ordinary and accustomed meaning unless it appears from the specification or the file history that they were used differently by the inventor. *Carroll Touch, Inc. v. Electro Mechanical Sys., Inc*, 15 F.3d 1573, 1577, 27 USPQ2d 1836, 1840 (Fed. Cir. 1993). Thus, when the claims call for a "programmable I/O port," that is exactly what is meant. It means that the I/O port must be "programmable" and the Examiner's position that "nothing in the claimed limitations require the I/O port to actually be 'programmable'" is both untenable and reversible error. The Board's attention is directed to paragraph [75] of the instant specification, for example, noting the "configuration changes of the **programmable** I/O ports 209, 211…can be initiated by the NOC 101 or by a user…."

Thus, the Honorable Board is respectfully requested to reverse the rejections of claims 1-4, 6-11, 13-18, 20, 21, 25, 26, and 30-33 under 35 U.S.C. § 103.

VIII. CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Appellants request the Honorable Board to reverse each of the Examiner's rejections.

To the extent necessary, a petition for an extension of time under 37 C.F.R. §1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

DITTHAVONG MORI & STEINER, P.C.

February 5, 2009
Date

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IX. CLAIMS APPENDIX

1. A method for configuring telemetry devices over a wireless network, the method comprising:

transmitting a configuration message over the wireless network to one of the telemetry devices for configuring a programmable input/output (I/O) port of the one telemetry device, wherein the I/O port couples to an object, and the one telemetry device sets parameters relating to the I/O port according to the configuration message;

receiving data corresponding to the I/O port of the one telemetry device for managing a plurality of objects corresponding to the telemetry devices, wherein the wireless network is a two-way paging system;

receiving a location data request for Assisted-Global Positioning System (A-GPS) data over the wireless network from the one telemetry device; and

transmitting the A-GPS data in response to the location data request, wherein the one telemetry device determines location of the object based upon the A-GPS data.

2. A method according to claim 1, further comprising:

transmitting a control message to the one telemetry device, in response to the control message the one telemetry device controlling one of the object via the I/O port and status of the I/O port.

3. A method according to claim 2, wherein a signal is received over the I/O port controls operation of the one telemetry device.

4. A method according to claim 3, wherein the object is an automobile, and the signal represents an output of a sensor or a switch of the automobile.

5. (Canceled)

6. A method according to claim 1, wherein the one telemetry device autonomously obtains GPS data to determine the location of the object.

7. A method according to claim 1, further comprising:

receiving a message from a client to initiate transmission of the configuration message.

8. A fleet and asset management system for configuring telemetry devices over a wireless network, the system comprising:

a presentation server configured to generate a configuration message for transmission over the wireless network to one of the telemetry devices for configuring a programmable input/output (I/O) port of the one telemetry device, wherein the I/O port couples to an object, and the one telemetry device sets parameters relating to the I/O port according to the configuration message;

a messaging server configured to transmit the configuration message and to receive data corresponding to the I/O port of the one telemetry device for managing a plurality of objects corresponding to the telemetry devices, wherein the wireless network is a two-way paging system; and

a GPS server configured to receive a location data request for Assisted-Global Positioning System (A-GPS) data over the wireless network from the one telemetry device, and to transmit the A-GPS data in response to the location data request,

wherein the one telemetry device determines location of the object based upon the A-GPS data.

9. A system according to claim 8, wherein the presentation server generates a control message for transmission to the one telemetry device, in response to the control message the one telemetry device controlling one of the objects via the I/O port and status of the I/O.

10. A system according to claim 9, wherein a signal is received over the I/O port controls operation of the one telemetry device.

11. A system according to claim 10, wherein the object is an automobile, and the signal represents an output of a sensor or a switch of the automobile.

12. (Canceled)

13. A system according to claim 8, wherein the one telemetry device autonomously obtains GPS data to determine the location of the object.

14. A system according to claim 8, wherein the presentation server receives a message from a client to initiate transmission of the configuration message.

15. A computer-readable storage medium carrying one or more sequences of one or more instructions for configuring telemetry devices over a wireless network, the one or more sequences of one or more instructions including instructions which, when executed by one or more processors, cause the one or more processors to perform the steps of:

transmitting a configuration message over the wireless network to one of the telemetry devices for configuring a programmable input/output (I/O) port of the one telemetry

device, wherein the I/O port couples to an object, and the one telemetry device sets parameters relating to the I/O port according to the configuration message;

receiving data corresponding to the I/O port of the one telemetry device for managing a plurality of objects corresponding to the telemetry devices, wherein the wireless network is a two-way paging system;

receiving a location data request for Assisted-Global Positioning System (A-GPS) data over the wireless network from the one telemetry device; and

transmitting the A-GPS data in response to the location data request, wherein the one telemetry device determines location of the object based upon the A-GPS data.

16. A computer-readable storage medium according to claim 15, further including instructions for causing the one or more processors to perform the step of:

transmitting a control message to the one telemetry device, in response to the control message the one telemetry device controlling one of the object via the I/O port and status of the I/O.

17. A computer-readable storage medium according to claim 16, wherein a signal is received over the I/O port controls operation of the one telemetry device.

18. A computer-readable storage medium according to claim 17, wherein the object is an automobile, and the signal represents an output of a sensor or a switch of the automobile.

19. (Canceled)

20. A computer-readable storage medium according to claim 15, wherein the one telemetry device autonomously obtains GPS data to determine the location of the object.

21. A computer-readable storage medium according to claim 15, further including instructions for causing the one or more processors to perform the step of:

receiving a message from a client to initiate transmission of the configuration message.

22. A method for configuring telemetry devices over a wireless network, the method comprising:

communicating with a fleet and asset management system to obtain information about a plurality of objects;

receiving a user input relating to configuration of one of a plurality of telemetry devices corresponding to the plurality of objects; and

in response to the user input, transmitting the user input to the fleet and asset management system,

wherein the fleet and asset management system generates a configuration message based on the user input for transmission over the wireless network, including a two-way paging system, to the one telemetry device for configuring an input/output (I/O) port of the one telemetry device according to a protocol adapted for the two-way paging system, the I/O port being coupled to a corresponding one of the objects, and the one telemetry device setting parameters relating to the I/O port according to the configuration message.

23. A method according to claim 22, further comprising:

receiving another user input to instruct the fleet and asset management system to transmit a control message to the one telemetry device, in response to the control message the one telemetry device controlling one of the objects via the I/O port and status of the I/O port.

24. A method according to claim 23, wherein a signal received over the I/O port controls operation of the one telemetry device.

25. A method according to claim 24, wherein the object is an automobile, and the signal represents an output of a sensor or a switch of the automobile.

26. A method according to claim 22, wherein the wireless network is a two-way paging system and includes a Global Positioning System (GPS) reference network for providing Assisted-Global Positioning System (A-GPS) data to the telemetry devices for determining locations of the corresponding objects, the one telemetry device being configured to determine autonomously location of the corresponding object.

27. A client device for configuring telemetry devices over a wireless network, the client device comprising:

means for communicating with a fleet and asset management system to obtain information about a plurality of objects;

means for receiving a user input relating to configuration of one of a plurality of telemetry devices corresponding to the plurality of objects; and

means for transmitting the user input to the fleet and asset management system, in response to the user input,

wherein the fleet and asset management system generates a configuration message based on the user input for transmission over the wireless network, including a two-way paging system, to the one telemetry device for configuring an input/output (I/O) port of the one telemetry device according to a protocol adapted for the two-way paging system, the I/O port being

coupled to a corresponding one of the objects, and the one telemetry device setting parameters relating to the I/O port according to the configuration message.

28. A client device according to claim 27, wherein another user input is received instructing the fleet and asset management system to transmit a control message to the one telemetry device, in response to the control message the one telemetry device controlling the corresponding one of the objects via the I/O port.

29. A client device according to claim 28, wherein a signal received over the I/O port controls operation of the one telemetry device.

30. A client device according to claim 29, wherein the object is an automobile, and the signal represents an output of a sensor or a switch of the automobile.

31. A client device according to claim 27, wherein the wireless network is a two-way paging system and includes a Global Positioning System (GPS) reference network for providing Assisted-Global Positioning System (A-GPS) data to the telemetry devices for determining locations of the corresponding objects, the one telemetry device being configured to determine autonomously location of the corresponding object.

32. A method according to claim 1, wherein the wireless network has a protocol that specifies a format for the configuration message including,

a field for providing port settings including,

a port field specifying the I/O port, and

a pin setting field for specifying pin settings for the I/O port, wherein the pin setting field specifies information on type of pin and information on configuration of the pin.

33. A system according to claim 8, wherein the wireless network has a protocol that specifies a format for the configuration message including,

a field for providing port settings including,

a port field specifying the I/O port, and

a pin setting field for specifying pin settings for the I/O port, wherein the pin setting field specifies information on type of pin and information on configuration of the pin.

X. EVIDENCE APPENDIX

Appellants are unaware of any evidence that is required to be submitted in the present Evidence Appendix.

XI. RELATED PROCEEDINGS APPENDIX

Appellants are unaware of any related proceedings that are required to be submitted in the present Related Proceedings Appendix.